



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
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AIRBORNE
EXPRESSREPLY TO
ATTENTION OF

Office of Counsel

AUG 14 1990

Mr. Daniel W. McGovern
Regional Administrator
U.S. Environmental Protection Agency
Region IX
1235 Mission Street
San Francisco, California 94103

16 AUG 1990
RA <u>DEA</u> <u>JW 8.16.90</u>
Referred To <u>ORC</u>
CC: <u>H-1</u> ✓
File: _____

Dear Mr. McGovern:

This letter concerns the southern portion of the Phoenix-Goodyear Airport Superfund Site (PGA Site) in Arizona. Reference is made to your special notice letter concerning this site dated March 2, 1990 and to our reply of May 3, 1990.

Since receipt of your special notice letter, this agency has attempted to negotiate a settlement with the other potentially responsible parties (PRPs), particularly the Goodyear Tire and Rubber Company, which would allow a combined offer to be made to EPA for the performance of all of the work required for the final remedy for this site by the September 1989 record of decision (ROD). Region IX has been kept advised of this process by copies of letters, and by participation in some of the meetings. Due to our status as a federal agency, this process has been complicated, and the options available to DOD as a PRP are limited due to restrictions which arise from other federal laws and regulations. Most recently, we offered to provide a lump sum cash settlement to Goodyear in return for a complete release and the performance by Goodyear of all actions necessary to complete remediation of the southern portion of the PGA site. Goodyear has not accepted our offer.

We sincerely desire to move this process forward in order to resolve any liability which DOD may have in relation to this site and to get the process of site remediation underway. In furtherance of these purposes, it is hereby offered on behalf of the United States Department of Defense that the U.S. Army Corps of Engineers (USACE) will perform the soil vapor extraction portion of the remediation required for this site if EPA will enter into an interagency agreement under the following terms and conditions.

This offer is not limited to areas of the site where the United States Navy may have engaged in activities which contributed to contamination at the site during the period of Navy ownership of the airport portion of the site, and is not limited to property which was formerly owned by the Navy. This offer is intended to satisfy any responsibility or liability DOD may have at this site under Section 107 of CERCLA, 42 U.S.C. 9607, as well as Section 120 of CERCLA, 42 U.S.C. 9620 and the provisions of the Defense Environmental Restoration Program, 10 U.S.C. 2701, et seq. This offer is contingent upon the negotiation and execution of an interagency agreement which includes a full release which is equivalent to and provides the same protection as a covenant not to sue for DOD, and also provides the greatest possible protection from contribution actions in accordance with Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

Negotiators from our agencies have previously met and informally discussed this matter. They reached a preliminary understanding that the agreement will use as a format, a standard EPA administrative order on consent, but will include clauses taken from the model DOD - EPA federal facilities agreement, including (1) the funding clause which contains an Anti-Deficiency Act savings provision and recognizes the DOD budget priority model, (2) the dispute resolution clause, (3) the stipulated penalties clause with amounts to be negotiated, and (4) the force majeure and extensions clauses. A number of other clauses will need to be developed for this agreement in order to allow the use of the Missouri River Division Laboratory for the quality assurance plan, to resolve responsibility for requests under the Freedom of Information Act, 5 U.S.C. 522b for release of records generated under this agreement, and a section defining the work requirements and schedule which is adapted to the procurement procedures we are required to follow by other federal laws and regulations.

It is essential that the procedures utilized in completing this agreement meet all of the requirements necessary to obtain the contribution protection provided by CERCLA Section 113. To this end, DOD requests that EPA satisfy all requirements for public notice and comment necessary to obtain contribution protection, and it is recommended that the procedures described in CERCLA Section 122(i), 42 U.S.C. 9622(i), be followed prior to final approval of this agreement by your agency. In addition, DOD must preserve on behalf of the United States the right to make claims under Section 113(f)(1), 42 U.S.C. 9613(f)(1), to seek contribution from other parties to recover the portion of response costs to be incurred by the United States pursuant to this agreement which exceed a fair and equitable allocation of site response costs for DOD.

A series of detailed discussions have already taken place informally between our agencies to define the work which will be required to complete the soil vapor extraction portion of the site remediation. Our general understanding is that the area defined as target area no. 2 in the September 1989 ROD is the area which is required to be remediated. No other areas of the site will require soil vapor extraction, except that two of the western portions of the target area, which are physically separated from the larger portion of the target area, may need to be connected during implementation. It is also understood that the point of compliance has not been defined, but that a decision tree method, which was proposed in the draft consent decree attached with your March 2, 1990 special notice letter can be utilized to determine when compliance has been achieved in the target area. EPA will make the final determination of when compliance has been achieved within particular areas where remediation is being performed and in the complete target area for soil vapor extraction.

DOD will attempt to arrange voluntary access to the target area from the current property owners, the City of Phoenix and the Loral Corporation. If they should refuse or fail to provide adequate access, it is requested that EPA utilize its authorities to obtain access on behalf of DOD for the performance of this work.

Other arrangements will have to be made by EPA for the performance of the remainder of the remediation work required for this site, either by obtaining agreement for or ordering the performance of the work by Goodyear Tire and Rubber Company, or by arranging for the performance of the work by EPA at the expense of the Superfund, with cost recovery actions at a later time against the other PRPs, but not DOD. It is requested that EPA make every reasonable effort, in arranging for the performance of the remainder of the site remediation work, to obtain agreement from other PRPs not to seek further contribution from DOD for any response costs for this site.

We are preparing a draft interagency agreement which we will provide for your review if you are interested in pursuing this offer. Authority to execute this agreement on behalf of DOD has been delegated to me as the District Engineer of the Omaha District. It will be necessary for the Omaha District to obtain approval of the funds needed to perform the work through our chain of command, and to obtain review and approval of the agreement through our headquarters to the United States Department of Justice. It is anticipated that this approval process can be achieved concurrently with the public notice, comment and approval process within your agency.

Shortly after we submit a draft agreement, it is requested that appropriate members of your staff and my staff meet to further discuss and refine the agreement. Arrangements may be made with Mr. Stan Bauer at FTS 864-7767 or Ms. Ann Wright at FTS 864-4064.

I am pleased to be able to make this offer to you. It moves our agencies closer to our common goal of achieving progress in remediation of the environment and accomplishment of the remedy for this site, and because it may allow a cooperative resolution of any liability which DOD may have concerning this site.

Sincerely,


for Donald E. Hazen LTC, EN
Colonel, Corps of Engineers
District Engineer

Copies Furnished Via Telecopier:

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